Supreme Court, U.S.
FILED

01 965 DEC 17 2001

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No.

In the Supreme Court of the United States

HELEN ROSE MOLINARI,

Petitioner,

vs.

STATE OF ILLINOIS DEPARTMENT OF INSURANCE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the United States Court of Appeals for the Seventh Circuit erroneously held that Petitioner's claim under the Americans With Disabilities Act was barred by the Eleventh Amendment.

II. Whether the United States Court of Appeals for the Seventh Circuit erroneously failed to conduct a de novo review of whether dismissal was proper.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully asks this Court to issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review that court's judgment and opinion entered on October 15, 2001.

OPINIONS BELOW

The October 15, 2001 decision of the United States Court of Appeals for the Seventh Circuit is not published and is reprinted in the appendix to this petition. The opinion of the District Court for the Northern District of Illinois, Eastern Division, Civil No. 01 C 2474 is not published and is reprinted in the appendix to this petition.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit entered its judgment on October 15, 2001. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The United States District Court for the Northern District of Illinois asserted jurisdiction under 42 U.S.C. § 121101 *et seq*., 28 U.S.C. §§ 1331, 1343(4). The United States Court of Appeals for the Seventh Circuit Court of Appeals asserted jurisdiction pursuant to 28 U.S.C. § 1291.

Petitioner, Helen MOLINARI, ("MOLINARI"), was hired by the Respondent, The State of Illinois, Department of Insurance ("DOI"), on June 21, 1999, to work as a Financial Examiner Trainee. MOLINARI had been a conditioned CPA. The duties of a Financial Examiner were to examine the conduct of companies that are chartered in Illinois or do business in Illinois. At the time of her hire, MOLINARI disclosed that she had carpal tunnel syndrome, and that her syndrome was permanent in nature. Plaintiff was told that she would be trained for twelve months and that during said period, she would be on probation.

MOLINARI was initially assigned to Concordia Mutual Company. She was to receive training under Dave Grouley. Once Grouley left the department, MOLINARI's training was suspended. MOLINARI was subsequently assigned to work at Allstate Insurance in Northbrook, Illinois. MOLINARI received training from Nester Almaria. MOLINARI received her first review in August, 1999, which was satisfactory. Plaintiff was then reassigned to work under Raymond Thomas. Plaintiff performed tasks under Thomas with minimal guidance and supervision.

Approximately five (5) months into her training, MOLINARI had to take two days off of work due to her carpal tunnel syndrome. Plaintiff then received another re-

view (now six (6) months into her employment), which was satisfactory. From approximately January, 2000 to April, 2000, MOLINARI was assigned work under Michael Goldstein. When MOLINARI advised Goldstein that she was experiencing problems with her hand, Goldstein made a sarcastic remark about her disability. On or about April 17, 2000, MOLINARI advised Virginia Godek, Assistant Chief Examiner, that she was in pain and unable to lift a coffee pot.

Plaintiff subsequently received poor reviews from her supervisors, Goldstein and Thomas, who claimed that her handwriting was illegible and that she could not get an examination to be performed at Rush Prudential HMO & Prudential Insurance done on time. MOLINARI told her supervisors that she would try to improve her handwriting, but that it would be difficult because she would always have trouble writing due to her carpal tunnel syndrome. On or about June 6, 2000, Defendant advised Plaintiff that she would not be certified. Defendant then terminated MOLINARI's employment.

MOLINARI timely filed a charge of discrimination with the EEOC, charging the Defendant violated the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 121101. MOLINARI then filed a Complaint in the United States District Court for the Northern District of Illinois, where she alleged disability discrimination. In her original Complaint, Plaintiff sought monetary damages and other relief. In her Amended Complaint, MOLINARI sought only equitable relief. The district court dismissed Plaintiff's Amended Complaint pursuant to F.R.C.P. 12(b)(1), and MOLINARI appealed. The United States Court of Appeals for the Seventh Circuit summarily affirmed the district court's ruling.

Petitioner, Eloise MOLINARI, now seeks a writ of certiorari from this Court to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

REASONS FOR GRANTING THE WRIT

I.

Certiorari Should Be Granted Because The District Court and The United States Court Of Appeals For The Seventh Circuit Erroneously Found That Petitioner's Claim Was Precluded by the Eleventh Amendment.

Defendant moved for dismissal on the basis that the district court lacked jurisdiction to hear Plaintiff's claims. In support of its position, Defendant relied upon *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001). In *Garrett*, this Court held that states were immune from suit by private individuals under the ADA for claims of money damages. Relying upon *Garrett*, the district court noted that *Garrett* only applied to suits for money damages.

Pursuant to her Amended Complaint, MOLINARI abandoned her claim for monetary damages and chose only to seek equitable relief, including reinstatement to the position of Financial Examiner. The holding in *Garrett* was specifically limited to claims seeking money damages, relief that the Plaintiff was no longer seeking. Nonetheless, the district court, relying upon *Seminole Tribe v. Florida*, 517 U.S. 44, 58 (1996), held that regardless of the relief sought by the Plaintiff, it made no difference as to whether the claim was barred by the

Eleventh Amendment. Accordingly, the district court dismissed MOLINARI's Amended Complaint.

There are few recognized exceptions to the Eleventh Amendment's bar of immunity. But this "immunity from suit is not absolute." *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 670 (1999). One of the exceptions is that a State may expressly waive its immunity and consent to be sued in federal court. *See Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 238 (1985). The other recognized exception is that Congress may abrogate the sovereign immunity of the States when "it both unequivocally intends to do so and 'act[s] pursuant to a valid grant of constitutional authority.'" *Garrett*, n.3. However, thus far, the Supreme Court has only found a "valid grant of constitutional authority" to abrogate the States' immunity in Section 5 of the Fourteenth Amendment. *See Garrett*, 121 S. Ct. at 963; *Seminole Tribe*, 517 U.S. at 59-66.

Garrett, however, specifically provided that:

> States' sovereign immunity from suit by private individuals for money damages under Title I does not mean that persons with disabilities have no federal recourse against discrimination. Title I of the ADA still prescribes standards applicable to the states. Those standards can be enforced by the United States in actions for money damages, ***as well as by private individuals in actions for injunctive relief*** under *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 741 (1908). In addition state laws protecting the rights of persons with disabilities in employment

> and other aspects of life provide independent avenues of redress.

Board of Trustees v. Garrett, at n.9 (emphasis supplied).

Other courts have concluded that *Garrett* is not an automatic bar to a private plaintiff's ADA claims. In *Doe v. Rowe*, 156 F. Supp. 2d 35 (1st Cir. 2001), the First Circuit Court of Appeals held that mentally handicapped voters were not barred from bringing suit under the ADA against the state under Title II pursuant to *Garrett*. The court declined to apply *Garrett* since the plaintiffs in that case were only seeking injunctive relief as opposed to money damages. In *Wroncy v. Oregon Department of Transportation*, 2001 U.S. App. LEXIS 8761 (9th Cir. 2001), the Ninth Circuit similarly held that the state was not immune from suit under Title II of the ADA where plaintiff alleged that she was extremely sensitive to chemicals and that the Oregon Department of Transportation violated the ADA by refusing to stop spraying herbicides on roads near her home. The Court accordingly reversed the district court's decision to dismiss plaintiff's complaint.

Consequently, the United States Court of Appeals for the Seventh Circuit's opinion and judgment affirming the United States District Court for the Northern District of Illinois granting the DOI's Motion to Dismiss, should be reversed.

Certiorari should be granted so that MOLINARI's ADA claim may be properly reviewed.

II.

Certiorari Should Be Granted Because The United States Court Of Appeals For The Seventh Circuit Erroneously Failed To Conduct A De Novo Review Of Whether Dismissal Was Proper.

In the instant case, MOLINARI was represented by counsel at the district court level. On appeal, however, Plaintiff proceeded *pro se*. MOLINARI filed a Motion for Appointment of Counsel. The Seventh Circuit denied MOLINARI's Motion, and then summarily affirmed the order of the district court. In the instant case, the Seventh Circuit erred by failing to undertake a de novo review of the district court's judgment of whether dismissal was proper under the Eleventh Amendment. *MCI Telecommunications Corp. v. Illinois Bell Telephone Co.*, 222 F.3d 323, 337 (7th Cir. 2000). Had the Seventh Circuit analyzed the district court's judgment, it would have undoubtedly concluded that MOLINARI's claims were not barred under *Garrett*. *Doe v. Rowe*, 156 F. Supp. 2d 35 (1st Cir. 2001).

Consequently, the United States Court of Appeals for the Seventh Circuit's opinion and judgment affirming the United States District Court for the Northern District of Illinois granting the DOI's Motion to Dismiss, should be reversed.

Certiorari should be granted so that MOLINARI's ADA claim may be properly reviewed.

CONCLUSION

For the aforementioned reasons, Petitioner, HELEN MOLINARI, respectfully prays that this Honorable Court grant *Certiorari*, reverse the United States Court of Appeals for the Seventh Circuit, and remand for further proceedings.

Respectfully submitted,

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App. 1

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, IL 60604

Submission: October 10, 2001
Decided: October 15, 2001

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. MICHAEL S. KANNE, *Circuit Judge*
Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

HELEN MOLINARI,

Plaintiff-Appellant,

No. 01-3243 v.

STATE OF ILLINOIS, DEPARTMENT OF INSURANCE,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 01 C 2474—**Paul E. Plunkett**, *Judge*.

Appellant has filed pro se a motion for appointment of counsel. This court has carefully reviewed the final order of the district court, the record on appeal, and appellant's motion for appointment of counsel. Based on this review, the court has determined that any issues which could be raised are insubstantial and that further briefing would not be helpful to the court's consideration of

the issues. *See Taylor v. City of New Albany*, 979 F.2d 87 (7th Cir. 1992); *Mather v. Village of Mundelein*, 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be a waste of time and no member of the panel desires briefing or argument).

Accordingly, **IT IS ORDERED** that the motion for appointment of counsel is **DENIED**, and the order of the district court is summarily **AFFIRMED**.

App. 3

[Dated July 26, 2001]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HELEN ROSE MOLINARI,	)	
	)	
Plaintiff,	)	
v.	)	No. 01 C 2474
	)	
	)	
STATE OF ILLINOIS,	)	Paul E. Plunkett
DEPARTMENT OF INSURANCE,	)	Senior Judge
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff has sued the defendant for injunctive relief for its alleged violation of the American's with Disabilities Act, 42 U.S.C. & ("section") 12101 *et seq.*, ("ADA"). Defendant has filed a Federal Rules of Civil Procedure ("Rule") 12(b)(1) motion to dismiss the amended complaint, arguing that the Eleventh Amendment of the United States Constitution renders it immune from suit brought under the ADA for the reasons set forth below, the motion is granted.

The Legal Standard

The purpose of a Rule 12(b)(1) motion to dismiss, is to test the sufficiency of the complaint and not to decide the merits of the case. Dismissal is proper if, "it appears beyond doubt that the plaintiff can prove not set of facts in support of his claim which would entitle him to relief."

Conley v. Gibson, 78 S. Ct. 99, 102 (1957); *Hishon v. King & Spaulding*, 104 S. Ct. 2229, 2232 (1984).

The district court must accept as true all well-pleaded factual allegations in the complaint and draw reasonable inferences in the plaintiff's favor. *Transit Express v. Ettinger*, 246 F.3d 1018 (7th Cir. 2001), citing *Rueth v. EPA*, 13 F.3d 227, 229 (7th Cir. 1993).

Discussion

The Eleventh Amendment of the United States Constitution provides:

> The judicial power of the United States shall not be Construed to extend to any suit in law or equity, Commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Generally, a state is entitled to immunity from suit in federal court unless there exists one of two exceptions. "First, a State may by unequivocal language waive the protections of the Eleventh Amendment and thereby consent to suit in Federal Court." Second, Congress may by "unequivocal language use its enforcement powers under the Fourteenth Amendment to abrogate the State's Eleventh Amendment immunity." *Krell v. Bd. of Trustees of the Univ. of Ill.*, 934 F.2d 904, 906 (7th Cir. 1991) (citations omitted). Plaintiff claims that this suit falls into the latter exception because the ADA explicitly provides that, "(a) State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter." 42 U.S.C. & 12202.

However, the Supreme Court has held that Congress may abrogate a state's Eleventh Amendment immunity only when it both "unequivocally intends to do so and acts pursuant to a valid grant of constitutional authority." *Bd. of Trustees of the Univ. of Ala. v. Garrett*, 121 S. Ct. 955, 962 (2001) (internal citations omitted). In *Garrett* the Supreme Court held that Congress did not act pursuant to a valid grant of constitutional authority when it sought to abrogate the states' Eleventh Amendment immunity from ADA damage suits filed by private individuals. The Court noted that Congress may only abrogate Eleventh Amendment immunity pursuant to a valid exercise of its power under & 5 of the Fourteenth Amendment, which empowers Congress to enforce the substantive guarantees of that amendment by "enacting appropriate legislation." *Id.* at 962-63. (citations omitted). The substantive guarantee implicated by the ADA is the right to equal protection. According to its Fourteenth Amendment jurisprudence, the Court stated, the equal protection clause does not require states to make, "special accommodations for the disabled, so long as their actions towards such individuals are rational." *Id.* at 964. Thus Congress' attempt to subject states to ADA damage claims could only be a valid exercise of its & 5 power if it sought to remedy an identified "pattern of irrational state discrimination in employment against the disabled." *Id.* at 965. The ADA's legislative history evidenced no such pattern. Thus, the Court concluded, Congress exceeded its constitutional authorize when it attempted to abrogate the states' Eleventh Amendment immunity to ADA suits for money damages. *Id.* at 967-68.

The holding in *Garrett*, however is limited solely to suits for money damages, relief that the plaintiff does

not seek. Rather, in her amended complaint, plaintiff asks only for injunctive relief. That, however, does not change the result. The Supreme Court has emphasized that the Eleventh Amendment bars claims against states and their agencies regardless of the type of relief sought. *Seminole Tribe v. Florida*, 517 U.S. 44, 58 (1996). "We have often made it clear that the relief sought by a plaintiff suing a State is irrelevant to the question whether the suit is barred by the Eleventh Amendment." *Cory v. White*, 457 U.S. 85, 90 (1982).

Despite this well established principle, the plaintiff contends *Garrett* authorizes private individuals to sue states for injunctive relief under the ADA. In relevant part it provides:

> State's sovereign immunity from suit by private individuals for money damages under Title I does not mean that persons with disabilities have no federal recourse against discrimination. Title I of the ADA still prescribes standards applicable to the states. Those standards can be enforced by the United States in actions for money damages, as well as by private individuals in actions for injunctive relief under *Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L.Ed. 741 (1908). In addition, state laws protecting the rights of persons with disabilities in employment and other aspects of life provide independent avenues of redress.

Bd. of Trustees of the Univ. of Ala. v. Garrett, 121 S. Ct. 955, 962 at n.9 (2001).

However, a suit for injunctive relief based on *Ex Parte Young*:

> [I]s a suit against State officers as individuals, not against the state itself. We held above that the only proper defendant in an action under the provisions under the ADA at issue here is the public body as an entity. A suit resting on the *Young* approach is not a suit against the public body and therefore cannot support relief. [Plaintiff] must pursue all of his ADA theories in state court.

Walker v. Snyder, 213 F.3d 344, 347 (7th Cir. 2000); *see also Gleason v. Board of Educ. of the City of Chicago*, 792 F.2d 76, 79 (7th Cir. 1986). The plaintiff is suing the State of Illinois itself, not individual state offices. Thus, she cannot take refuge in either *Garrett* or *Ex Parte Young*. Because the State of Illinois retains its Eleventh Amendment immunity to all ADA claims, plaintiff's amended complaint must be dismissed.

Conclusion

For the foregoing reasons, defendant's motion to dismiss for lack of jurisdiction is granted.

/s/ Paul E. Plunkett
SENIOR UNITED STATES DISTRICT JUDGE

Dated: July 26, 2001